

GIBSON DUNN



International Trade Update

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New BIS Export Controls Target Russian and Belarusian Industrial Sectors & Technology Infrastructure, and Crack Down on Diversion

This update highlights the principal changes announced in the BIS rule and discusses how these expanded export control measures coordinate with and complement additional sanctions targeting Russia announced by OFAC on the same day.

On June 12, 2024, one day [before](#) G7 leaders met in Italy to [coordinate](#) Ukraine-related policy, and in line with Office of Foreign Asset Controls (“OFAC”)’s [latest round](#) of sanctions measures and designations, the Bureau of Industry and Security (“BIS”) [released](#) a final rule on the “Implementation of Additional Sanctions Against Russia and Belarus Under the Export Administration Regulations (EAR) and Refinements to Existing Controls” in response to Russia’s continuing invasion of Ukraine. The rule, [published](#) to the Federal Register on June 18, 2024, (i) significantly expands the scope of U.S. export controls targeting Russia and Belarus, (ii) creates a single, unified Russian and Belarusian embargo provision in the EAR, (iii) alters the Entity List structure to address unlawful diversion, and (iv) formally primes the private-sector for more aggressive enforcement by BIS and other U.S. government agencies.

All changes in the rule are effective as of June 12, 2024, except for the addition of new controls on certain EAR99-designated software, which are effective September 16, 2024.

We highlight below the principal changes announced in the BIS rule, and we discuss how these expanded export control measures coordinate with and complement additional sanctions targeting Russia announced by OFAC on the same day.

I. Major Changes in the Final Rule

The final rule targets Russian and Belarusian industrial sectors and key technology infrastructure by, among other things, substantially expanding the scope of items subject to industry sector- and software-related restrictions as well as limiting the scope of an available license exception for consumer communication devices (“CCDs”).

Addition of Over 500 Industrial Items to the Russia and Belarus Sanctions Measures

The final rule adds 522 entries to the [list](#) of items subject to the Russian and Belarusian industry sector sanctions set forth in Supplement No. 4 to 15 C.F.R. § 746, covering numerous metals, tools, and other items containing technical inputs sought by Russia to advance its war effort in Ukraine (e.g., stoves and related appliances that contain potentially valuable circuitry and/or semiconductors). The expanded list also adds crude oil to the list of covered items. Accordingly, a license is now required to export, reexport, or transfer (in country) these additional items to Russia or Belarus.

The expanded scope of items in Supplement No. 4 now spans an additional 18 complete chapters of the Harmonized Tariff Schedule of the United States (“HTSUS”), in addition to the four chapters completely covered by prior controls.

The rule also [restricts](#) additional items considered “chemical riot control agents,” which have been added to Supplement No. 6.

Narrowed Scope of License Exception CCD for Russia and Belarus

The final rule narrows the scope of items eligible for License Exception CCD when commodities and software are being exported to Russia and Belarus. 15 [CFR § 740.19\(b\)](#). Under the revised rule, License Exception CCD will no longer cover a range of consumer electronic devices when destined for Russia that were previously within scope, including consumer disk drives and solid-state storage equipment; graphics accelerators and graphics coprocessors; modems, routers, switches and WiFi access points and drivers, communications and connectivity software for such hardware; network access controls and communications channel controllers; mass market memory devices; digital cameras; webcams, and memory cards; television and radio receivers, set top boxes, video decoders, and antennas; recording devices; integrated circuits described in 3A991.p or computers that incorporate such integrated circuits; or batteries, chargers, carrying cases, and accessories for the such items. License Exception CCD will retain its historic scope for exports of consumer digital communications products to be sold in retail transactions destined for Cuba, and certain government officials in Belarus, Cuba, and Russia will remain ineligible for this license exception.

New Controls on EAR99 Software for Enterprises, effective September 16, 2024

The rule expands software-related controls – which were previously limited to software [listed](#) on the Commerce Control List, or for [use in](#) quantum computing or advanced manufacturing – to include certain categories of EAR99-designated enterprise management software as well as software updates for previously deployed software. When the software-related measures take effect on September 16, 2024, these controls will extend to the following categories of software classified as EAR99: software for

- enterprise resource planning (ERP),
- customer relationship management (CRM),
- business intelligence (BI),
- supply chain management (SCM),
- enterprise data warehouse (EDW),
- computerized maintenance management system (CMMS),
- project and product lifecycle management (PLM),
- building information modelling (BIM),
- computer aided design (CAD),
- computer-aided manufacturing (CAM), and
- engineering to order (ETO).

However, BIS will continue to keep available a license exclusion for the export of certain mass market encryption commodities and covered enterprise management software that are provided to civil end-users in Russia that are wholly-owned subsidiaries of companies headquartered in the United States or certain allied and partner nations (see § 746.8(a)(12)(ii)). BIS will also exclude from the new controls the export of covered enterprise management software to entities operating exclusively in the medical or agricultural sectors.

Addition of Addresses to the Entity List

The final rule authorizes BIS to publish addresses to the Entity List without listing a corresponding entity name. BIS explains that this change is aimed at further combating unlawful diversion by targeting addresses which BIS believes are frequently used by multiple shell companies. As such, an export license requirement now applies to all items controlled on the Commerce Control List or listed in Supplement No. 7 to Part 746 when going to any entity using the listed address, even if the entity is not itself specifically named on the Entity List. BIS further notes that a party's use of the same address as a listed entity is a red flag that requires additional due diligence. Therefore, when confronted with a listed address, exporters, reexporters, and transferors must undertake sufficient due diligence to ensure that the co-located entity is neither the listed entity nor acting on its behalf.

Pursuant to the rule, BIS added eight addresses and five entities in China (which includes Hong Kong under the EAR) and Russia to the Entity List.

Revision, Suspension, or Revocation of License Exceptions

The final rule revises paragraph (b) of 15 C.F.R. § 740.2 (“Restrictions on all License Exceptions”) to clarify that BIS may revise, suspend, or revoke any license exception with or without notice, in whole or in part, and at any time. BIS notes that the revision is designed to “provide transparency” to exporters and notes the risk that license exceptions may be abused by malign actors who make superficial changes to corporate ownership structures to make use of a license exception or who fraudulently claim that a license exception applies to their shipments. BIS reserves the right to react immediately to such scenarios by revoking license exception eligibility for particular persons without advance notice.

Reorganization of Russia- and Belarus-Related Provisions of the EAR

Of interest to compliance professionals, BIS has consolidated Russia- and Belarus-related sanctions measures into a single section, newly expanded 15 C.F.R. § 746.8. BIS notes that the consolidation is intended to enhance clarity and facilitate compliance. Related Supplements will retain their original numbering.

II. Compatibility with OFAC’s IT and Software Services Determination

BIS’s new controls on EAR99 software for enterprises are complemented by OFAC’s June 12 [Determination](#) pursuant to E.O. 14071 that comes into effect on September 12, 2024 and will prohibit the supply of certain IT, cloud-based, and software services to any person in Russia. OFAC’s announced prohibition does not extend to any service for software that is licensed by the U.S. Department of Commerce for export to Russia or that is not subject to the EAR but would be within an applicable license exception (or otherwise authorized by the U.S. Department of Commerce) if it was subject to the EAR. Consequently, OFAC’s IT and software services ban works in concert with BIS’s recent controls by excluding certain categories of services that relate to items authorized for export, reexport, or transfer under the EAR pursuant to applicable exclusions and license exceptions. Therefore, software service providers should be mindful of the applicability of the EAR, and its corresponding license exceptions, to underlying software for which they provide related services, even when they do not export the underlying software itself.

III. Policy Analysis, Compliance Considerations, and Key Takeaways

BIS’s June 12 final rule is a substantial escalation of U.S. export controls targeting Russia and Belarus and also harmonizes U.S. measures with those in place in the EU and UK which have maintained substantially broader lists of controlled items than the United States, and – unlike the United States. In an effort to create substantive and structural compatibility with restrictions put into effect by the EU and UK, BIS has [maintained](#) the Common High Priority List and is making [greater](#) use of large tranches of HTS codes in Russia-related export controls. Furthermore, the rule adds new restrictions on enterprise software that more closely align with measures already in place in the [UK](#) and [EU](#), since December of 2022 and 2023, respectively.

However, the rule’s authorization for BIS to utilize address-only entries on the Entity List, in conjunction with evolving enhanced due diligence requirements and expectations, may result in

significant difficulties in practice. Restricted party screening based on address-only inputs can be difficult and more error prone – whether automated or not – because address information is often unavailable, inaccurate (and/or misleading), incomplete, or duplicative between multiple tenants in the same building, all of which may lead to more false positives that require additional compliance resources to carefully resolve. Moreover, most companies only use address information today to resolve or corroborate potential hits that are based on name matches as the initial screening hit. Companies may now need to update their policies and screening protocols to include controls that can identify and triage searches and hits based on address information standing alone.

Taken together, these changes represent a significant effort to undermine Russian circumvention and smuggling networks, of which OFAC has already [designated](#) dozens, and highlights that a continuing focus of U.S. regulators is on such diversion routing through the greater China region. As BIS uncovers and lists these networks, it will be critical to ensure that it accurately identifies restricted end users.

These changes also [complement](#) OFAC's June 12 designations, which took aim at third-country support to Russia's military-industrial base. In addition to imposing sanctions on over 300 individuals and entities in and outside of Russia, OFAC expanded the scope of secondary sanctions risk facing foreign financial institutions that continue to engage in significant transactions supporting, or provide services to, Russia's military-industrial base. As we noted [previously](#), E.O. 14114 of December 22, 2023, introduced new secondary sanctions risk for foreign financial institutions that conduct or facilitate any significant transaction for certain categories of sanctioned persons or that provide any service involving Russia's [military-industrial base](#). On June 12, OFAC expanded the scope E.O. 14114 by including any significant transaction conducted or facilitated, or any service provided, by a foreign financial institution with any person, regardless of location or industry sector, that is subject to blocking sanctions under E.O. 14024.

The result of this coordinated action is that both U.S. and foreign entities – especially those operating as freight forwarders, shippers, or foreign financial institutions – should consider implementing heightened due diligence policies calibrated to reduce the risk of unlawful diversion to, or for the benefit of, Russia or Belarus, including, for example, by means of routing transactions through less-restricted jurisdictions or by falsifying bills of lading or other transaction documents to circumvent existing compliance processes and procedures.

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